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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,936	10/30/2003	Keiichi Takagaki	2003_1574A	7062

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WENDEROTH, LIND & PONACK, L.L.P.  
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SUITE 800  
WASHINGTON, DC 20006-1021

EXAMINER
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SMITHERS, MATTHEW

ART UNIT	PAPER NUMBER
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2137

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/02/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/695,936

Applicant(s)

TAKAGAKI ET AL.

Examiner

Matthew B. Smithers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21 and 32-35 is/are allowed.
- 6) ☒ Claim(s) 22, 24 and 27-30 is/are rejected.
- 7) ☒ Claim(s) 23, 25, 26 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 01/29/04; 03/01/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statements filed January 29, 2004 and March 1, 2004 has been placed in the application file and the information referred to therein has been considered as to the merits.

### ***Claim Objections***

Claim 31 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically, claim 31 recites "A communication system . . . wherein the first communication device is the communication device according to claim 1, and the second communication device is the communication device according to claim 24." As presently written claim 31, which forms a system depends from two independent claims each of which claims a different device. Claim 31 should be written in independent form and charged as an independent claim showing the limitations of device claims 1 and 2 or the claim should be canceled altogether.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 22 and 29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 22 recites "An algorithm selection program for causing a computer to execute the steps described in claim 21." A program, as presently claimed, lacks the necessary physical articles to constitute a machine or a manufacture within the meaning of 35 USC 101 and is not a series of steps to a process nor a combination of chemical compounds to form a composition of matter. Claim 29 recites "An algorithm selection program for causing a computer to execute the steps described in claim 28." Claim 29 is also considered non-statutory for the reasons given above with claim 22.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 24, and 27-30 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. patent 6,671,810 granted to Jardin.

Regarding claim 24, Jardin meets the claimed limitations as follows:

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"A communication device comprising: an encryption information determination section for selecting an encryption algorithm from among a plurality of previously provided encryption algorithms, the selected encryption algorithm being different depending on an encryption algorithm or encryption algorithms used for one or more packets received from a communication counterpart; an encryption/decryption processing section for encrypting a packet to be transmitted to the communication counterpart in accordance with the encryption algorithm selected by the encryption information determination section; and a communication processing section for transmitting the packet encrypted by the encryption/decryption processing section." see column 3, line 48 to column 5, line 43.

Regarding claim 27, Jardin meets the claimed limitations as follows:

"The communication device according to claim 24, wherein, if a packet to work as a determination material based on which to select an encryption algorithm has not been received from the communication counterpart, the encryption information determination section causes the communication processing section to transmit a packet which induces a response from the communication counterpart." see column 3, line 48 to column 5, line 43.

Regarding claim 28, Jardin meets the claimed limitations as follows:

"An algorithm selection method comprising: an encryption information determination step of selecting an encryption algorithm from among a plurality of previously provided encryption algorithms, the selected encryption algorithm being different depending on an encryption algorithm or encryption algorithms used for one or more packets received

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from a communication counterpart; a code processing step of encrypting a packet to be transmitted to the communication counterpart in accordance with the encryption algorithm selected by the encryption information determination step; and a communication processing step of transmitting the packet encrypted by the code processing step." see column 3, line 48 to column 5, line 43.

Regarding claim 29, Jardin meets the claimed limitations as follows:

"An algorithm selection program for causing a computer to execute the steps described in claim 28." see column 3, line 48 to column 5, line 43.

Regarding claim 30, Jardin meets the claimed limitations as follows:

"A computer readable recording medium having recorded thereon the algorithm selection program according to claim 29." see column 3, line 48 to column 5, line 43.

### ***Allowable Subject Matter***

Claims 1-21, and 32-35 are allowed.

The following is an examiner's statement of reasons for allowance: The present invention is directed to a method, system and device for encrypting communications. Independent claims 1, 21, and 32 each recite the uniquely distinct features of "an encryption information determination step of selecting an encryption algorithm from among a plurality of previously provided encryption algorithms, the selected encryption algorithm being different depending on a predicted total used resource or an actual total used resource". The closest prior art, Jardin (US 6,671,810) discloses a method for

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randomly selecting a security algorithm for establishing secure communications over a computer network fails to anticipate or render the above underlined limitation obvious.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 23, 25, and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

With respect to claim 23, the cited prior art fails to specifically teach a computer readable recording medium having recorded thereon the algorithm selection program according to claim 22.

With respect to claim 25, the cited prior art fails to specifically teach wherein the encryption information determination section includes an encryption algorithm statistics table for storing the encryption algorithm or encryption algorithms used for the one or more packets received from the communication counterpart, and selects an encryption algorithm appearing with a highest frequency among the encryption algorithm or encryption algorithms used for the received one or more packets by referring to the encryption algorithm statistics table.

With respect to claim 26, the cited prior art fails to specifically teach wherein the encryption information determination section includes an encryption algorithm statistics table for storing the encryption algorithm or encryption algorithms used for the one or more packets received from the communication counterpart, and an encryption process and used-resource table for storing information concerning an encryption strength and a calculation amount of each of the previously provided encryption algorithms, and selects an encryption algorithm having a highest encryption strength among those encryption algorithms whose calculation amounts are equal to or less than a statistical value derived from the calculation amounts of the encryption algorithms used for the received packets, by referring to the encryption algorithm statistics table and the encryption process and used-resource table.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A. Gilbert (US 20030167314) discloses a secure communications method.

B. Schier (US 6,976,176) discloses a method for establishing secure communications.

C. Lincke et al (US 6,253,326) discloses a system for secure communications.

D. Utsmi (US 6,195,677) discloses a system for converted data exchanged between two terminals.




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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew B. Smithers whose telephone number is (571) 272-3876. The examiner can normally be reached on Monday-Friday (8:00-4:30) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel L. Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Matthew B Smithers  
Primary Examiner  
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